IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

OP.No. 22175 of 1999(M)

PETITIONER:

K.O.BHASKARAN, S/O.KARAMBAN,
AGED 59 YEARS, HEAD VEHICLE SUPERVISOR (RETD.),
K.S.R.T.C., RESIDING AT ONANTTUVEEDU,
NATTAKOM P.O., KOTTAYAM : 13.

BY ADV. SRI.N.UNNIKRISHNAN

RESPONDENTS:

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1) THE KERALA STATE ROAD TRANSPORT CORPORATION,
TRANSPORT BHAVAN, FORT,
THIRUVANANTHAPURAM, REP: BY ITS
MANAGING DIRECTOR.

2) THE DISTRICT TRANSPORT OFFICER,
K.S.R.T.C., KOTTAYAM.

BY ADV. SRI.JAMES KOSHY.N., SC. KSRTC
SRI.JOHNSON.P.JOHN, SC,KSRTC
SHRI.JOHNSON P.JOHN, SC, KSRTC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

Ext.P1: **Copy of pension payment order No.R.Dis (PLB.1) 48150/94 dated 9.10.1995,**

Ext.P2: **Copy of the Extract of Rules for fixation of pay in the revised scales of pay (1990 scales) effective from 2/2/1990 as per memorandum of settlement (agreement) dtd.28.12.1990.**

Ext.P3: **Copy of the memorandum No.PRC/19546/90 dtd.28/5/1991.**

Ext.P4: **Copy of the memorandum No.PRC/19546/90 dtd.4/9/1991.**

Ext.P5: **Copy of the representation dtd.Nil submitted by the petitioner.**

Ext.P6: **Copy of memorandum No.PLE4/9011/97 dtd.18/9/1997.**

Ext.P7: **Copy of letter dtd.9/3/1999 submitted by the petitioner.**

RESPONDENTS' EXHIBITS:- **Nil.**

(true copy)

P.A. TO JUDGE.

Kvs/-

T.R. RAMACHANDRAN NAIR, J.

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O.P.No. 22175 OF 1999-M.

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Dated this the 19th day of October, 2007.

J U D G M E N T

The petitioner herein was an employee of the Kerala State Road Transport Corporation. He retired from service as a Head Vehicle Supervisor on 31-10-1994. The writ petition is filed challenging the recovery of an amount of Rs.10,443/- towards the excess pay from the D.C.R.G. sanctioned to him.

2. The petitioner was sanctioned the D.C.R.G. as per Ext.P1 order. The recovery was effected along with Ext.P1 that too without any notice to him and without informing him about the liability, if any. Therefore, the petitioner contends that the action taken to recover the D.C.R.G. is without authority of law.

3. The petitioner has averred that the Corporation had entered into a Memorandum of Settlement regarding wage revision on 28.12.1990. The said memorandum provides sub rules for fixation of pay in the revised scale of pay (1990 scales) effective from 2.2.1990 as per Memorandum of Settlement dated 28.12.1990. These rules came into force from 2.2.1990. As per the said rules, the employees are allowed to exercise option to remain in the pre-

revised scales of pay of the post/posts held by them as Substantive/Officiating as on 1.2.1990 upto any date within the period of validity of the agreement ie. from 2.2.1990 to 1.2.1994. Ext.P2 is an extract of the same. It appears that the respondents accepted the option given by the petitioner and thereafter he was promoted to the post of Head Vehicle Supervisor with effect from 27.8.1990. His pay was fixed as on 27.8.1990 in the post of Driver Selection Grade and the pay was re-fixed on 27.8.1990 as Vehicle Supervisor and subsequently as Head Vehicle Supervisor.

4. After the retirement of the petitioner, in 1997 the pay fixed in 1990 was re-fixed by the respondents without any notice and without furnishing any details. Accordingly, recovery of an amount of Rs.10,443/- was made. The petitioner filed a representation Ext.P5 pointing out the said facts. The petitioner has got a further case that no chance was given to the retired employees nor any copy of the memorandum was served to them, thereby leaving them unaware of the re-option opportunities granted by the Corporation. The specific complaint is that he was not given any opportunity to submit re-option. It was followed by Ext.P7.

5. Admittedly, the petitioner retired from service on 31-10-1994 and the recovery is effected without any notice to him also. The said issue is covered in favour of the petitioner by a decision of a Division Bench of this Court reported in *Badarudeen v. Kerala State Road Transport*

Corporation **(ILR 1999(1) Kerala 1). The question was considered with reference to note 3 rule 3 of Part III of Kerala Service Rules. After examining the question whether the fixation of liability should be after affording opportunity to the pensioner, this Court held in paragraphs 8 and 9 as follows:**

> **"Under note 3 rule 3 of Part III of the rules the liabilities of an employee should be quantified either before or after retirement and intimated to him before retirement if possible or after retirement within a period of three years on becoming pensioner. The liabilities of a pensioner should be quantified and intimated to him. In our opinion, when the corporation decide to take further action under rule 3 Part III of Kerala Service Rules, it shall serve the persons concerned a show cause notice specifying the action proposed to be taken under that rule and the persons concerned will be required to submit their reply to the show cause notice within such time as may be prescribed by the Corporation. The Corporation shall consider the reply and pass necessary orders. What is contemplated under the above notes to rule 3 is a communication of the liabilities to the pensioner so as to enable him to submit his explanation before recovery is effected. The appellant has retired from service on 31st May, 1994 and that the Corporation had not issued any notice quantifying the liability payable by the appellant or afforded any opportunity to the appellant to explain as to why the death-cum-retirement gratuity due to him should not be adjusted towards the liability. It is not in dispute that the appellant was driving the vehicle belonging to the Corporation during the relevant time in the course of his employment. It is also not in dispute that the liability, if any, of the Corporation arising out of the accident is vicarious in nature. The learned Judge, in our opinion, is not right in holding that since the appellant who was an employee of the Corporation, was a party to the proceedings before the Motor Accident Claims Tribunal, there is no need to give an opportunity to him to explain as to why the liability be not fixed. We are also unable to accept the reasoning of the learned Judge that since an opportunity has already been given to**

employee or pensioner by a properly constituted Tribunal, there is no need to give a notice to the appellant quantifying the liability and affording an opportunity to explain as contemplated by Notes 2 and 3 to rule 3."

6. In the light of the above dictum the recovery effected herein is also illegal. Admittedly no notice was given to the petitioner proposing to impose any liability. Recovery was also effected unilaterally. The petitioner retired in the year 1994 and the recovery that is effected is excess pay that was paid to him based on the fixation of the year 1990. The re-fixation of pay is only in the year 1997 and he was not given any right for re-option also. There were no proceedings in that respect before his retirement. Therefore, it is a case where the whole action is taken behind the back of the petitioner. For these reasons, the action taken by the respondents by effecting recovery of an amount of Rs.10,443/- is illegal and I declare so.

The writ petition is allowed and there will be a direction to the respondents to disburse an amount of Rs.10,443/- to the petitioner within a period of two months from the date of production of a copy of this judgment. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-